



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

**NOTICE OF A PUBLIC HEARING
TO CONSIDER AMENDMENTS TO THE
POOLING PLAN FOR MARKET MILK IN CALIFORNIA**

Notice is hereby given that the Secretary of Food and Agriculture is calling a public hearing on his own motion to consider technical amendments to the Pooling Plan for Market Milk, as Amended (Pool Plan) for the Dairy Accounting System (DAS).

Hearing Date, Place and Time - The hearing will be held on Tuesday, July 1, 2008, at the California Department of Food and Agriculture's main auditorium located at 1220 N Street in Sacramento. The hearing will begin at 9:30 a.m.

The hearing is called pursuant to Section 62717, Chapter 3, Part 3, Division 21 and Articles 7 and 8, Chapter 2, Part 3, Division 21 of the Food and Agricultural Code (FAC), as implemented by Title 3, Section 2080.2 of the California Code of Regulations (3 CCR 2080.2). The hearing noticed herein will be conducted in accordance with the procedures prescribed in 3 CCR 2080.4.

Department's Proposed Amendments – The Department's Milk Pooling Branch is proposing the following amendments:

1. An amendment to insert a definition for the new Dairy Accounting System that will replace the program used by the Department to administer the Pooling Plan. *Reference new Section 134 of the Pool Plan attached to this Notice.*
2. Amendments to provide for use of actual solids-not-fat (SNF) in pool reporting and pool calculations rather than relying on an Average SNF Test to convert skim milk volumes to SNF content. *Reference new Section 802.5 of the Pool Plan attached to this notice.*
3. An amendment to provide that the Department make use of the most current available version of PC Miler® distance measuring program released by ALK Technologies instead of the Public Utilities Commission Mileage Tables for calculation of the distance between dairy facilities within the state. *Reference new Sections 921.5, 922.5 and 923.5 of the Pool Plan attached to this Notice.*

Secretary's public hearing on his own motion-

The Secretary's call of a hearing to amend the Pooling Plan is considered pursuant to FAC Section 62717 and Section 2082.2 of the California Code of Regulations (3 CCR 2082.2). A copy of this call and other hearing documents can be obtained by contacting the Milk Pooling Branch at (916) 341-5901 or the Dairy Marketing Branch at (916) 341-5988 and by assessing the Department's website at www.cdfa.ca.gov/dairy. From the dairy home page, click on *Announcements, Hearings and Statutes* then *Dairy Hearing Matrix* and then *technical Amendments Pool Plan-DAS*.

Call of Hearing - The hearing will consider specific amendments to the Pool Plan regarding mileage calculations to be integrated with the new Dairy Accounting System currently under development. The hearing will also consider amendments to the Pool Plan to require reporting and use within the new Dairy Accounting System of actual solids-non-fat (SNF) content of milk received and utilized by reporting handlers.

The hearing will consider the proposal to amend Article 1 of the Pool Plan to define “the Dairy Accounting System”. In addition, the following Pool Plan Sections to be amended will be considered: Article 8, Section 802 the components of reported milk to include actual SNF, and Article 9.2, Sections 921.2, 922, and 923, used in determining distances for Transportation Allowances.

The hearing will consider the factual basis, evidence and the legal authority upon which to make any and/or all of the proposed amendments to the Pool Plan.

Parties should also refer to the declarations, purposes, goals and requirements of the “Equalization Pools” Program as codified in FAC Chapter 3 and FAC Sections 62700, 62701 and 62702.

At the hearing the Department will receive testimony and evidence, both oral and documentary. Interested parties who wish to introduce testimony and/or exhibits shall provide the Hearing Officer at the hearing six (6) copies of such documents for the official record, as well as one copy for the court reporter, for a total of seven (7) copies. In addition, the Department encourages participants to make additional copies available for use by other hearing participants.

Copies of the hearing transcripts received at the hearing will not be available for distribution via the Department, but are available for inspection at the Milk Pooling Branch. If interested parties wish to purchase copies, arrangements may be made with the reporting service at the hearing.

Alternative Proposals – All interested parties are entitled to submit proposals detailing alternatives within the call of the hearing. These proposals must be signed by a responsible party and received by the Department’s Milk Pooling Branch no later than 4:00 pm on Tuesday, June 3, 2008. The Milk Pooling Branch’s office location is at 560 J Street, Suite 150, Sacramento. Alternative proposals may also be sent electronically via email to dairy@cdfa.ca.gov, faxed to (916) 341-5995, or mailed to Hearing Officer, c/o CDFA Milk Pooling Branch, 1220 N Street, Sacramento CA 95814.

Final Decisions Resulting from the Hearing - The final decisions resulting from this hearing will be issued in accordance with the procedures and criteria contained in Chapter 2 of Division 21 of the FAC, as necessary. The Department's decision will include consideration of any relevant economic effect of the proposed amendments on dairy producers, cooperatives and milk handlers as introduced into the hearing record.

The Department’s decision will also include consideration of the following:

► whether amendments to the Pooling Plan are necessary to effectuate the purposes of Chapters 3 and 3.5 of Part 3 of Division 21 of the FAC;



Notice of Public Hearing
Page Three

► whether proposed Pooling Plan amendments would result in payments to producers of amounts in accordance with FAC Section 62750;

► whether proposed Pooling Plan amendments are substantive in nature thereby requiring a statewide referendum in accordance with FAC Section 62717;

► whether the amendments would be in accord with all policies, purposes, goals and standards contained in Sections 62700, 62701, 62702, 62712, and 62714.

Ex Parte Communications Prohibited - From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues with any person having an interest in the proceeding. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Public Workshop – The Department will conduct a public workshop on Tuesday, June 17, 2008 at the California Department of Food and Agriculture's main auditorium located at 1220 N Street in Sacramento beginning at 10:00 a.m.

The purpose of the Workshop is so that interested persons can review and discuss the proposed new Section 134, and proposed new Subsections 802.5, 921.5, 922.5 and 923.5 of the Pooling Plan with Department staff. In preparation for the Workshop, the Department is distributing with this Hearing Notice a comparison table of distances between sample points in Northern and Southern California calculated using the current PUC Tables and the PC Miler[®] program.

Interested parties may also obtain copies of the comparative data on the Department's website at www.cdfa.ca.gov/dairy/dairy_hearings_matrix. If any interested party has questions regarding the call of this hearing he or she may contact Donald Shippelhouse or John Lee in the Milk Pooling Branch at (916) 341-5901.

The workshop will be informal and educational in nature. Discussion during the workshop will not be part of the official hearing record and will not be considered in rendering a decision.

The Department's entire hearing exhibit folder will be available for public inspection at the Milk Pooling Branch office at the address above on June 24, 2008.

Media contacts and publication staff are asked to contact the Department's Public Affairs Office by e-mail at cdfapublicaffairs@cdfa.ca.gov or by phone at (916) 654-0462.

All interested persons are invited to attend and participate in the public workshop and the hearing. Interested parties are encouraged to present any data or information that is relevant to the consideration of the issues raised in the call of this hearing.

Persons with Disabilities - The Department of Food and Agriculture wishes to ensure that all members of the public have access to all public meetings. If you require a special accommodation,

Notice of Public Hearing
Page Four

please contact Marie Caron-Lyles at (916) 341-5901 or TDD (800) 735-0193 at least five days before hearing date.

Original sign by: George Gomes

George Gomes, Undersecretary

Date 4/25/08_____

Enclosure

PROPOSED NEW SECTION 134 OF THE POOLING PLAN FOR MARKET MILK

Section 134. “Dairy Accounting System” means the relational database software program utilized by the Department to administer the Pooling Plan for Market Milk. The Dairy Accounting System will replace the legacy Pool Accounting System upon full development and satisfactory verification of the functionality of the System. The Department shall provide 10-days notice to all interested parties of the implementation of the new Dairy Accounting System.

PROPOSED NEW SUBSECTION 802.5 OF THE POOLING PLAN FOR MARKET MILK

Section 802.5. This subsection shall become effective with the implementation of the new Dairy Accounting System and shall supersede Section 802. This subsection shall remain in effect so long as the new Dairy Accounting System is utilized by the Milk Pooling Branch for administration of the Pooling Plan for Market Milk. The Department shall provide 10 days notice of the implementation of this Subsection.

Each handler required to report pursuant to Section 801 shall, on the same report, show the product pounds, milk fat content and solids-not-fat content for the following utilization or disposition:

(a) For each processing plant, the following:

- (1) Class 1 products disposed of in packaged form (including dispensers) to retail outlets, wholesale outlets, and other plants;*
- (2) Bulk market milk, restricted use market milk and manufacturing milk utilized in the manufacture of Class 2, Class 3, Class 4a, and Class 4b products;*
- (3) Bulk market milk transferred or diverted to pool plants, each identified by destination. The classification of such items shall be based upon the receiving handler's inplant usage of each class for the previous month;*
- (4) Bulk market milk transferred or diverted to exempt producer-handlers, each identified by destination; such items shall be classified as Class 1;*
- (5) Bulk market milk and restricted use market milk diverted to nonpool plants or other outlets except pool plants and the claimed classification thereof, provided that if such classification is other than Class 1, the classification of such milk shall be changed to Class 1 at a later date if the secretary is unable to verify its use in lower priced classes; such items shall be identified by destination;*

- (6) *Bulk market milk, restricted use market milk and manufacturing milk transferred to nonpool plants or other outlets except pool plants and the claimed classification thereof, provided that if such classification is other than Class 1, the classification of such milk shall be changed to Class 1 at a later date if the secretary is unable to verify its use in lower priced classes; such items shall be identified by destination;*
 - (7) *Packaged Class 1 products on hand at the end of the month which shall be classified as Class 1;*
 - (8) *Bulk market milk on hand at the end of the month which shall be unclassified but shall be priced at the Class 4a level;*
 - (9) *Bulk manufacturing milk on hand at the end of the month;*
 - (10) *For plants who have Class 1 inplant disposition, the disappearance of milk fat, solids-not-fat or fluid carrier not to exceed 3 percent of the total receipts for the reported month shall be classified on the basis of the percentage of the inplant utilization of the current month, with any excess shrinkage above 3 percent classified as Class 1; for plants having no Class 1 inplant disposition, the total disappearance shall be classified on the basis of the percentage of the inplant utilization of the current month; provided, however, if the operator of the plant does not make and retain full and complete records of the receipt, use, disposition and handling of all milk or milk products received in the plant and inventories thereof, the secretary shall classify any disappearance of milk fat, solids-not-fat or fluid carrier as Class 1.*
- (b) *For each cooperative association acting as a handler under Paragraph 105(c) the following:*
 - (1) *Bulk market milk diverted to pool plants, each identified by destination; the classification of such items shall be based upon the receiving handler's inplant usage of each class for the previous month;*
 - (2) *Bulk market milk diverted to nonpool plants or other outlets except pool plants and the claimed classification thereof, provided that if such classification is other than Class 1 the classification of such milk shall be changed to Class 1 at a later date if the secretary is unable to verify its use in lower priced classes; such items shall be identified by destination.*
 - (3) *Bulk manufacturing milk and restricted use market milk diverted to nonpool plants or other outlets except pool plants, and the claimed classification thereof, provided that if such classification cannot be verified by the Secretary, the Secretary, in his or her discretion may reclassify such milk to an appropriate class.*

PROPOSED NEW SUBSECTION 921.5 OF THE POOLING PLAN FOR MARKET MILK

Section 921.5 This subsection shall become effective with the implementation of the new Dairy Accounting System and shall supersede Section 921.2. This subsection shall remain in effect so long as the new Dairy Accounting System is utilized by the Milk Pooling Branch for administration of the Pooling Plan for Market Milk. The Department shall provide 10 days notice of the implementation of this Subsection.

Transportation allowances shall be calculated on the miles determined, using the PC Miler[®] program, from the dairy farm to the location of the plant of first receipt, subject to Sections 921 and 921.1, and shall apply to all pool milk. The following rates shall be utilized in calculation of the allowances:

(a) For plants located in the Bay Area receiving area, which shall consist of the counties of Alameda, Contra Costa, Santa Clara, Santa Cruz, San Francisco, and San Mateo:

<i>(1) From zero through 99 miles</i>	<i>\$0.27 per CWT</i>
<i>Over 99 miles through 199 miles</i>	<i>\$0.34 per CWT</i>
<i>Over 199 miles</i>	<i>\$0.36 per CWT</i>

(b) For plants located in the Sacramento receiving area, which shall consist of the County of Sacramento:

<i>(1) From zero through 59 miles</i>	<i>\$0.15 per CWT</i>
<i>Over 59 miles</i>	<i>\$0.20 per CWT</i>

(c) For plants located in the Shasta receiving area, which shall consist of the County of Shasta:

<i>(1) From zero through 29 miles</i>	<i>\$0.13 per CWT</i>
<i>Over 29 miles through 49 miles</i>	<i>\$0.16 per CWT</i>
<i>Over 49 miles</i>	<i>\$0.19 per CWT</i>

(d) For plants located in the North Bay receiving area, which shall consist of the counties of Marin, Solano, and Sonoma:

<i>(1) From zero through 44 miles</i>	<i>\$0.19 per CWT</i>
<i>Over 44 miles through 99 miles</i>	<i>\$0.29 per CWT</i>
<i>Over 99 miles</i>	<i>\$0.34 per CWT</i>

(e) For plants located in the Southern California receiving area, which shall consist of the counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura:

(1) From the Counties of Riverside and San Bernardino:

<i>From zero through 89 miles</i>	<i>\$0.11 per CWT</i>
<i>Over 89 miles</i>	<i>\$0.37 per CWT</i>

(2) *From California's 56 other counties:*

<i>From zero through 89 miles</i>	<i>\$0.11 per CWT</i>
<i>Over 89 miles through 109 miles</i>	<i>\$0.37 per CWT</i>
<i>Over 109 miles through 139</i>	<i>\$0.56 per CWT</i>
<i>Over 139 miles</i>	<i>\$0.70 per CWT</i>

(f) *For Plants located in the San Diego receiving area, which consist of the County of San Diego:*

(1) <i>From zero through 89 miles</i>	<i>\$0.11 per CWT</i>
<i>Over 89 miles through 139 miles</i>	<i>\$0.43 per CWT</i>
<i>Over 139 miles</i>	<i>\$0.70 per CWT</i>

PROPOSED NEW SUBSECTION 922.5 OF THE POOLING PLAN FOR MARKET MILK

Section 922.5. This subsection shall become effective with the implementation of the new Dairy Accounting System and shall supersede Section 922. This subsection shall remain in effect so long as the new Dairy Accounting System is utilized by the Milk Pooling Branch for administration of the Pooling Plan for Market Milk. The Department shall provide 10 days notice of the implementation of this Subsection.

The mileage to be used for calculating the transportation allowance for each producer's shipments shall be based on the most current version of PC Miler® released by ALK Technologies and tested for satisfactory functionality for use with the Dairy Accounting System utilized by the Milk Pooling Branch for administration of the Pooling Plan as follows:

(a) *The distance calculated shall be based on miles from the dairy farm's tanker loading area to the plant of first receipt's receiving dock using Global Positioning System Coordinates for each location;*

(b) *The constraints utilized with the PC Miler® program for determining routes from dairy farms to plants of first receipt shall be set to:*

- 1. Use of roads and highway routes accessible to commercial trucks*
- 2. Use of roads and highway routes within the boundaries of the state of California.*

PROPOSED NEW SUBSECTION 923.5 OF THE POOLING PLAN FOR MARKET MILK

Section 923.5 This subsection shall become effective with the implementation of the new Dairy Accounting System and shall supersede Section 923. This subsection shall remain in effect so long as the new Dairy Accounting System is utilized by the Milk Pooling Branch for administration of the Pooling Plan for Market Milk. The Department shall provide 10 days notice of the implementation of this Subsection.

Each month the secretary shall determine for each individual producer the amount of transportation allowance in the following manner:

- (a) Determine the total pounds of milk shipped to each plant of first receipt and the miles from the producer's dairy farm to such plant;*
- (b) For the shipments that qualify for a transportation allowance, select the appropriate rate as set forth in Section 921.2, and multiply the total pounds of milk shipped by such rate;*
- (c) For each producer, except producer-members of cooperative associations, the amount calculated in Paragraph (b), hereof, shall be credited to the producer's settlement;*
- (d) For each cooperative association, the amount calculated for individual producer-members in Paragraph (b), hereof, shall be accumulated and credited to the respective cooperative association's settlement.*